



July 23, 2019

SENT VIA EMAIL AND U.S. MAIL

Harry Blunt
Concord Coach Lines
7 Langdon Avenue
Concord, NH 03301
hblunt@concordcoachlines.com

Re: Protecting Passengers in Bus Raids by U.S. Customs and Border Protection

Dear Mr. Blunt,

We write to applaud the recent inclusion of “Know Your Rights” materials on your website,¹ to help passengers learn about their constitutional rights when being questioned by Customs and Border Protection (“CBP”). However, the best way to truly protect your passengers is to stop allowing CBP to board your buses in the first place. In a letter sent to you more than a year ago, we expressed concern that allowing CBP to board buses violates basic Fourth Amendment principles. In a response dated April 30, 2018, you indicated that Concord Coach Lines would continue allowing immigration officials to board buses, stating that it was your understanding that the Department of Homeland Security had “different interpretations” about its “legal authority to engage in immigration enforcement activity on buses or at terminal facilities.”

We ask you to reconsider. Based on public records recently obtained from U.S. Customs and Border Protection, it is now clearer than ever that Concord Coach Lines has the right to refuse consent to warrantless bus raids. It is your duty to your passengers to do so.

Specifically, since receiving your letter, we obtained internal training materials from Customs and Border Protection (excerpted below) demonstrating that even CBP agrees that Fourth Amendment reasonableness and consent rules govern their authority to search in so-called “transportation checks.” In other words, regardless of what DHS may have told you about its claimed blanket authority under 8 U.S.C. § 1357 and 8 C.F.R. § 287, CBP understands that it is bound by basic Fourth Amendment principles.²

¹ See Your Rights with CBP, <https://concordcoachlines.com/your-rights-with-cbp/>. Concord Coach Lines tweeted on July 18, 2019, “Because of our proximity to intl borders, US Customs/CBP may visit our locations to conduct business, so we have added a section to our website called “Your Rights with CBP”, based largely on materials & guidance from the ACLU.”

² “It is clear, of course, that no Act of Congress can authorize a violation of the Constitution.” *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973).

It is a basic Fourth Amendment rule that, absent some other constitutional authority for the search, officers must rely on consent. That means, as CBP explains in its training materials, that transportation checks “[a]lmost always begin as consensual encounters.” In such situations, bus passengers have the right to refuse to cooperate or consent.

Transportation Checks

United States v. Drayton, 536 U.S. 194 (2002)

Almost always begin as consensual encounters

UNITED STATES v. DRAYTON

- The fourth amendment does not require officers to advise bus passengers of their right to **not** cooperate and to refuse consent to searches.
- A bus passenger has the right to refuse consent to search and refuse to answer questions.
- The officer does not have to advise them of this right.

CBP’s own records thus support each of the arguments we raised in our original letter. The Fourth Amendment applies to all searches and seizures by law enforcement, including bus raids. When entering nonpublic areas, such as ticketed passenger zones, CBP must rely on a valid warrant, a showing of exigent circumstances, or consent in order to search or question individuals. *See, e.g., Marshall v. Barlow’s, Inc.* 436 U.S. 307, 315 (1978). Given the frequent lack of any other justification, consent is “almost always” required to begin the encounter. *See supra* Fig. 1. And, most importantly, whenever consent is required, consent can be refused. As stated by CBP, “[a] bus passenger has the right to refuse consent to search and refuse to answer questions.” Concord Coach Lines likewise has a constitutional right to refuse consent for CBP searches or questioning, which cannot be infringed upon by statute or regulation. *See, e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 883 (1975); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973).

It is no surprise that CBP has not been forthright with you about Concord Coach Lines’ right to refuse consent to bus raids. Indeed, when we requested public records on the topic, CBP

tried to keep many of these training materials secret. It took a federal lawsuit and a court order to force them to publicly disclose those materials. *See Am. Civil Liberties Union of Me. V. U.S. Dep't of Homeland Security*, Case No. 18-cv-00176-JDL, 2019 WL 2028512 (D. Me. May 8, 2019).

In light of the newly released public records, it is clearer than ever that Concord Coach Lines has a *choice* to continue to allow immigration agents to board buses and search. Choosing to consent to these bus raids jeopardizes your paying passengers' Fourth Amendment rights. Please reconsider your policy and put your passengers first.

We look forward to your reply and remain available to further discuss this matter with you.

Sincerely,



Jay Diaz
ACLU of Vermont



Gilles Bissonnette
ACLU of New Hampshire



Emma E. Bond
ACLU of Maine